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Washington, D.C.

Calendar No. 560

101ST CONGRESS
2d Session

SENATE

REPORT
101-298

DRUG OFFENDER'S DRIVING PRIVILEGES SUSPENSION ACT OF 1990

MAY 21 (legislative day, APRIL 18), 1990.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1804]

The Committee on Environment and Public Works, to which was referred the bill (S. 1804) to amend title 23, United States Code, to reduce the amount of Federal highway funds allocated to any State that does not provide for the revocation or suspension of the driver's license of any individual convicted of a drug offense, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

HISTORY OF LEGISLATION

Senator Frank R. Lautenberg introduced S. 1804, the "Drug Offender's Driving Privileges Suspension Act of 1989" on October 26, 1989 with Senators John W. Warner and Ted Stevens. Subsequently, Senator John C. Danforth became a cosponsor. The bill was referred to the Committee on Environment and Public Works. On November 15, 1989, the Subcommittee on Water Resources, Transportation, and Infrastructure held a hearing on S. 1804.

The concept of suspending the driving privileges of drug offenders has been endorsed by President Bush, a wide variety of law enforcement organizations, and several States. A Gallup poll found that 78 percent of both adults and teenagers supported enactment of such State laws.

The President's National Drug Control Strategy of September, 1989 says that "States should enact a range of penalties for persons caught using or possessing even small amounts of drugs, among them * * * (s)uspension of drivers' licenses for 1-5 years."

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A December 1988 report by several law enforcement groups also endorsed the concept of suspending the licenses of all drug offenders for a minimum of six months. The report was produced by the National Association of Attorneys General and the National District Attorneys Association in association with the International Association of Chiefs of Police, the International Narcotic Enforcement Officers Association, the National Criminal Justice Association and the National Sheriffs Association. In addition, S. 1804 has been strongly endorsed by the Fraternal Order of Police.

Purposes of Bill

The legislation has two primary goals: (1) deterrence of illegal drug activity, and (2) promotion of highway safety.

Deterrence.—There is an urgent need to reduce illegal drug activity across the Nation and to deter those who would engage in such activity. License suspension is a cost-effective, practical way to deter illegal drug activity, particularly for young persons, for whom driving privileges are highly valued. A Gallup poll found that 57 percent of teenagers and 49 percent of adults surveyed believed that telling students they would not get their licenses would be a "very effective" deterrent.

In 1988, West Virginia enacted a related statute that provides for the suspension of driver's licenses of students who drop out of school. Subsequently, the dropout rate was reduced by about one-third.

Highway safety.—While the extent of the drugged driving problem is not known with certainty, there are strong indications that it is a serious threat to highway safety. According to one witness, Dr. Kimball Maull, four out of ten drivers injured in an accident showed traces of illegal drugs.

A January 1990 study by researchers at the New York Hospital-Cornell Medical Center and the Office of the Chief Medical Examiner in New York found that one of every four drivers killed in New York City traffic accidents tested positive for cocaine use. The study focused on drivers between the ages of 16 and 45 and covered the years 1984 through 1987.

Preventing users of illegal drugs from driving should reduce accidents and save lives.

Summary of Bill as Introduced

S. 1804, as originally introduced, would withhold a portion of Federal-aid highway funds from States that do not have in place, as of October 1, 1991, a law requiring:

1. the revocation, or suspension for at least six months, of the driver's license of any individual who is convicted of any drug offense; and

2. a delay in the issuance or reinstatement of a driver's license to a convicted drug offender for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if, at the time of conviction, the individual does not have a driver's license, or if the driver's license of the individual is already suspended.

States would be allowed to make exceptions in the case of compelling circumstances.

"Drug offenses" covered include the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under the Controlled Substances Act.

The withholding mechanism under the bill tracks that of the national minimum drinking age law. Failure to have a license suspension law in effect would result in the withholding of five percent of the state's highway funds in the first year of noncompliance and ten percent each year thereafter. Funds affected are for Interstate construction, Interstate 4R, primary roads, secondary roads, and urban systems.

COMMITTEE ACTION

The Committee on Environment and Public Works approved S. 1804 by voice vote on April 24, 1990, after agreeing to a substitute amendment offered by Senator Lautenberg.

The substitute amendment made the following changes to the legislation:

1. Opt-out provision

The amendment allows a state to meet the requirements of the bill, and thereby not lose highway funding, if the Governor submits to the Secretary of Transportation a written certification that:

1. the Governor is opposed to the enactment or enforcement in his or her State of a qualifying license suspension law, or
2. the State legislature (including both houses of a bicameral legislature) has adopted a resolution expressing its opposition to such a law.

The provision represents a compromise between federal and State interests. It is designed to ensure that State leaders (a) give serious consideration to the concept of license suspension for all drug offenders, (b) make an affirmative decision about whether to adopt the approach, and (c) can then be held accountable to their constituents for that decision.

Under the amendment, a Governor may not submit an "opt-out" certification prior to the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the date of enactment. This is designed to prevent a Governor from immediately submitting an opt-out certification, which could reduce the likelihood of sufficient consideration of license suspension in the State legislature.

2. Changed compliance dates

The amendment gives States a longer period of time to enact a license suspension law (or to opt-out) before facing partial loss of highway funding. Under the bill as introduced, a State would begin to lose highway funding on October 1, 1991. The amendment would extend that deadline to the first day of the fiscal year which begins after the second full calendar year following the date of enactment,

Should the bill be enacted in 1990, that would set the deadline at October 1, 1993.

Similarly, the amount of funds withheld would increase from five percent to ten percent not after September 30, 1992 (as in the introduced bill), but on the first day of the fiscal year beginning after the fourth full calendar year following the date of enactment. Should the bill be enacted in 1990, that would be October 1, 1995.

Under the bill as introduced, funds withheld from a noncomplying State may be returned to the State if it subsequently complies, provided that compliance occurs prior to September 30, 1993. The amendment extends that date to September 30, 1995.

3. Drugged driving clarification

The amendment clarifies that a "drug offense" would include a criminal offense which proscribes the operation of a motor vehicle while under the influence of a controlled substance.

Section-by-Section Analysis

Section 1 states the short title of the Act, the "Drug Offender's Driving Privileges Suspension Act of 1990".

Section 2 adds a new section to title 23 of the United States Code, entitled "Section 159. Revocation or suspension of the driver's license of individuals convicted of drug offenses".

Withholding of highway funds

Under Section 159(a) (1) and (2), the Secretary of Transportation is required to withhold five percent of certain highway-related funds from any State that does not meet the Act's license suspension requirements on the first day of each fiscal year which begins after the second full calendar year following the date of enactment, unless the State "opts-out" pursuant to subsection (a)(3)(B). The amount withheld from noncomplying States is increased to 10 percent on the first day of the fiscal year which begins after the fourth full calendar year following the date of enactment.

Funds withheld from apportionment to any State on or before September 30, 1995 shall remain available for apportionment to that State, subject to time limitations specified in section 159(b).

License suspension requirements

Under Section 159(a)(3), a State meets the Act's license suspension requirements if it has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception—

1. the revocation, or suspension for at least six months, of the driver's license of any individual who is convicted, after the enactment of such law, of any violation of the Controlled Substances Act, or any drug offense; and

2. a delay in the issuance or reinstatement of a driver's license to such an individual for at least six months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is convicted.

The Act does not define the term "compelling circumstances warranting an exception". If a State opts to include this type of exception in its law, it may provide a reasonable definition of this term in the State statute, or it may allow this exception to be interpreted by State courts on a case-by-case basis.

The requirement that a State enforce such a law is satisfied so long as the State is attempting in good faith to enforce the law. If a State resident is convicted of a drug offense in another State, and officials of the State of residence are unaware of the conviction, the failure of the State of residence to revoke or suspend the offender's driver's license would not, by itself, be a sufficient basis to find the State of residence in noncompliance with the bill's requirements. Similarly, if State officials are unaware of the conviction of a resident under the Controlled Substances Act, the failure to revoke or suspend the resident's license is not, by itself, a sufficient basis to find the State in noncompliance.

States may enter into agreements with other States under which each State agrees to inform the others when a resident of one of the other States has been convicted of a drug offense. Similarly, a State may enter into agreements with Federal officials under which the State will be informed of all convictions in that State of violations of the Controlled Substances Act. State efforts to enter into such interstate and State-Federal agreements can be used as evidence in support of establishing a State's good faith effort to enforce a license suspension law. However, such agreements are not required by the Act.

Opt-out provision

Section 159(a)(3)(B) allows a State to comply with the Act's requirements, and thus not lose highway funding, if the Governor of the State (1) submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the date of enactment a written certification stating that the Governor is opposed to the enactment or endorcement in his or her State of a qualifying license suspension law; or (2) submits to the Secretary a written certification that the legislature (including both houses where applicable) has adopted a resolution expressing its opposition to a qualifying license suspension law.

The Act does not require these written certifications to be in any particular form. The certification could be in the form of a letter from a Governor to the Secretary of Transportation.

A Governor's or legislature's opposition to compliance with the Act's license suspension requirements must be stated clearly, explicitly and unambiguously. However, the Act does not require Governors or legislatures to provide particular explanations of the reasons for their opposition to compliance.

A Governor may submit a written "opt-out" certification where both Houses of a bicameral legislature have adopted different resolutions, so long as both resolutions clearly, explicitly and unambiguously express the respective House's opposition to a qualifying license suspension law.

Definitions

The following definitions are provided in Section 159(c):

Driver's license.—The Act defines this term to mean a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

Drug offense.—The Act defines this term to mean any criminal offense which proscribes (A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the prossession of which is prohibited under the Controlled Substances Act, or (B) the operation of a motor vehicle under the influence of such a substance.

The Act does not require a State to enact any particular drug offense law, nor would it require withholding of highway funds from any State that does not enact a law proscribing the activities described in the definition of a "drug offense". In addition, the Act does not include any noncriminal offense in the definition of "drug offense".

Convicted.—The Act states that this term includes "adjudicated" under juvenile proceedings.

Hearing

The Subcommittee on Water Resources, Transportation, and Infrastructure of the Committee on Environment and Public Works conducted a hearing on November 15, 1989 on the subject of S. 1804.

Testimony was received from representatives of the National Conference of State Legislatures, the National Association of Governors' Highway Safety Representatives, the Federal Highway Administration, and law enforcement groups, as well as a Member of Congress, a trauma surgeon, and a private citizen.

Witnesses discussed the problem of casual drug use; the effectiveness and appropriateness of Federally-imposed incentives and sanctions; the status of efforts at the Federal, State, and local levels of government to reduce drug-related offenses; and legal and administrative considerations in tying driving license revocation or suspension to drug convictions.

Rollcall Votes During Committee Consideration

Section 7(b) rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works requires that any rollcall votes be announced in reports accompanying legislation.

There were no rollcall votes taken during consideration of this bill.

On April 24, 1990, Senator Lautenberg offered a substitute amendment to S. 1804 incluidng: (1) an opt-out provision allowing a State Governor to provide written certification that the Governor or legislature is opposed to the law and thereby not lose highway funding; (2) an extension of the compliance dates; (3) a clarification of the phrase "drug offense"; and (4) a change of the year in the title from 1989 to 1990.

Senator Lautenberg moved adoption of S. 1804, incorporating the substitute amendment. The amendment was adopted by a voice vote. Senator Harry Reid then moved that the full bill be reported. Senator Daniel Patrick Moynihan seconded the motion and it was approved by a voice vote.

Evaluation of Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires the Committee to evaluate the regulatory impact of the reported bill. It is not anticipated that this bill will impose any significant new regulatory burden.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 1, 1990.

Hon. Quentin N. Burdick,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1804, the Drug Offender's Driving Privileges Suspension Act of 1990, as ordered reported by the Senate Committee on Environment and Public Works, April 24, 1990. CBO estimates that enactment of this bill would result in no significant costs for the federal government. The bill might result in some costs for state governments, but they are not likely to be significant.

S. 1804 would amend Chapter 1 of Title 23 of the U.S. Code to direct the Secretary of Transportation to withhold federal highway funds from states that do not meet certain requirements. To avoid losing these funds, a state would be required to either enact a law requiring the revocation or suspension, for at least six months, of anyone convicted of a drug offense, or submit a written certification that the governor or the legislature is opposed to the enactment of such a law.

If a state does not comply, it would lose five percent of its apportionments under the federal-aid highways interstate, primary, secondary and urban highways programs beginning in fiscal year 1994 (assuming that this bill is enacted in the current year). The percent of funds would increase to 10 percent in fiscal year 1996. In the current fiscal year, almost $10 billion was available for apportionment for these programs. It is unlikely that states would fail to comply and be penalized, since a written certification of opposition would be sufficient to avoid penalties.

Currently, most states do not have laws that would comply with this requirement. CBO cannot predict how many states would choose to enact such a law in response to this bill. Should they choose to do so, however, we estimate that the resultant costs

would not be great, based on information provided by officials in states that have similar laws.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marjorie Miller, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CHANGES IN EXISTING LAW

The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

159. Revocation or suspension of the driver's license of individuals convicted of drug offenses.

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